SUBJECT INDEX.

LIST OF CASES REFERRED TO.

(22,232)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 83

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES, AND J. E. BROUSSARD, APPELLANTS,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LeBLANC.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

ABSTRACT OF THE CASE AND QUESTIONS INVOLVED

This is a suit brought by Appellee Crawford, as successor as trustee in bankruptcy to Appellee E. J. LeBlanc, of the Estate of E. F. Moore and F. W. Bridgman, bankrupt rice farmers, against the above named Appellants and LeBlanc in the District Court of the United States for the Eastern District of Texas, to enjoin the prosecution by these Appellants of a suit for injunction in the State Court, begun against LeBlanc as defendant and sought to be continued by supplemental pleadings as against Crawford as his successor. *The case now before your Honorable Court was submitted on bill and answer* and a decree entered perpetually enjoining these appellants, from which they appealed to the Circuit Court of Appeals and on affirmance without opinion the appeal was duly allowed (Tr. p. 62), and prosecuted here. *The admitted allegations of the Bill of Complainant and the material portions of the Answer of these Appellants* show the following to be the material facts, viz:

In this case Appellee E. J. LeBlanc, a member of a firm of co-partners, having only a clerical position in its service,

(Tr. p. 14), accepted the position of trustee in bankruptcy of the estates of E. F. Moore and F. W. Bridgman, taking possession of an irrigated and growing crop of rice herein called the Stengle crop and the live stock and implements belonging to the bankrupts, (Tr. p. 15), without knowledge of any conflicting claims of right that could have been asserted on behalf of said bankrupt estate as against his, the trustee's firm, *to another irrigated crop of rice, herein designated as the McCrimmin crop,* (Tr. p. 27). When he learned of such conflict he returned an inventory showing what had come into his hand as trustee and excluding the subject of the conflict of claim *and sought to be permitted to resign as trustee,* (Tr. p. 28); creditors who asserted the claim for the estate, adverse to his firm, insisted that his resignation should not be accepted (Tr. p. 48) until it should be determined whether he was properly chargeable with the property in question, and the court of bankruptcy withheld ruling on the question of his discharge and heard evidence of right to the property in question on exceptions to his inventory and determined that he as trustee should have charged himself with the property, and that since he had suffered it to be appropriated by his firm (Tr. p. 7, S. 15), he should be charged with the *value* of it, which was ascertained in the proceeding to be $11,651.25. (Tr. p. 17). Appeal by LeBlanc from this order resulted in its affirmance in the Circuit Court of Appeals. (Tr. p. 17). His firm, whereof the other members are the appellants, claimed the McCrimmin crop, on which they have incurred over five thousand dollars of expense in making and saving it, and released a lien on $3000 worth of the live stock and implements of the estate in consideration of the contract for the crop. (Tr. p. 27.) Nevertheless, in the said ex parte proceedings, where the trustee was forced to occupy the position in conflict with his interest, he was directed to pay the full value of the crop into the bankruptcy court, (Tr. p. 17); he had no means of obtaining so great a sum for such purpose except to take it from the funds of his co-partnership and this he proposed to do, (Tr. p. 18). His co-partners thereupon obtained an injunction from the proper state court to prevent his taking their partnership funds for such purpose, but tendered the sum into court and invited prompt trial. This he made known to the bankruptcy court by petition, seeking to be relieved of the summary order till the question of right could be determined in the plenary trial. The order of the bankruptcy court, made in response to that petition, was that he must forthwith bring in the fund or be committed, (Tr. p. 18). Under the pressure of

this immediate certainty of commitment for contempt he violated the State Court order and thus obtaining the sum with interest, paid it into the hands of his successor as trustee in the bankruptcy court, (Tr. p. 18). The other members of his firm, knowing that he had gone into their funds for that purpose, but not consenting thereto, gave notice of the fact to his successor, as trustee in bankruptcy, the Appellee Crawford, and to the other agencies through whom the fund was passed from Appellee LeBlanc as trustee in bankruptcy to his Successor Crawford, *all of them receiving the notice before they received the money,* (Tr. pp. 19 and 31). Said successor nevertheless took and retained said sum. A supplemental petition was therefore filed in the State Court, making the said successor and the bank, where said sum was deposited by him, parties defendant, and simply asserting these facts and asking that plaintiff have judgment against them and such additional process against them as to insure their observance of the original injunction, (Tr. pp. 31 and 32). To this and to the Original Petition in the State court said successor and the bank filed demurrers, pleas and answers, and agreements relating to the trial to be had in the State court were made and filed, and the case stood ready for trial in the State Court (Tr. p. 19) when, at suit of said successor trustee, the temporary injunction was granted by the Bankruptcy Court to restrain these appellants from prosecuting their suit in the State Court, and the same order required these appellants to appear on a day certain and show cause why the injunction should not be made perpetual. (Tr. p. 9.) On the day named these appellants appeared with their answer, the cause was submitted by the complainant on bill and answer, (Tr. p. 50), the *admitted allegations of the bill and material allegations of the answer* showing the facts to be as here stated, and nevertheless the injunction against these appellants was perpetuated, restraining them from prosecuting their suit against Appellee Crawford in respect of the said fund so received by him (Tr. p. 50). Appeal was therefore prosecuted to the Circuit Court of Appeals at New Orleans, where the decree of the Bankruptcy Court was affirmed without written opinion, (Tr. p. 56), and from the judgment of affirmance this appeal has been duly allowed and prosecuted, (Tr. p. 62).

The questions involved are those raised by exception (Tr. p. 50) to the final decree and are as follows:

1. Appellants contend that since the State District Court had properly taken the specific fund (bank deposits of the appellants' co-partnership) under its protection by injunc-

tion, there should have been no interference with its control over same.

2. It was against equity and good conscience to grant the injunction which appellants complain of; for appellants manifestly have superior equities; and the trial which they tender in the State Court would satisfy every reasonable requirement of justice that could be made by Appellee Crawford and the creditors claiming under him.

SPECIFICATION OF ERROR RELIED UPON

The following assignment of error, filed in the Circuit Court of Appeals, is copied from page 62 of the Transcript:

The Circuit Court of Appeals erred in affirming the decree of the trial court, for this:

The said decree of the trial court perpetuated an injunction against these appellants' prosecuting by supplemental petition in the State Court their suit against Appellee Crawford, a trustee in bankruptcy, who is shown to have, with full notice and knowledge, received and retained more than twelve thousand dollars of the funds involved in said State Court suit from his predecessor in trust, E. J. LeBlanc, who had taken said funds in violation of the State Court's order; although the record shows that the bankruptcy court had never in any way laid hold on the property in controversy prior to the violation of the said State Court injunction, and although it is clear that the State Court had full jurisdiction and power, and freedom in due comity, to grant the injunction thus violated.

INTRODUCTION

If it can be demonstrated that the State Court *properly* ordered LeBlanc to refrain from taking partnership funds, for the purpose contemplated by him, then it would seem that the other questions involved in the argument present little difficulty in view of the certainty which this court has given to the rule that *there should be no interference by one court with the control assumed over a specific object by another court of competent jurisdiction, either exclusive or concurrent.* Whether or not the State Court *properly* made the order may depend upon one of two questions: (1) Had the partnership funds of the appellants ever become so affected with the orders made in the *ex parte* bankruptcy proceedings against LeBlanc, relating to the McCrimmin crop, as to render it improper, during the continuance of that condition, for the State Court to assume control of the partnership fund; (2) if so, had

there not been such release by the bankruptcy court of its grasp upon the crop and the proceeds of its sale, and such election to rely upon powers over the person of LeBlanc, (to make him bring in the sum there ascertained as the *value* of the crop, irrespective of its true value and irrespective of the source from which he obtained it), as to leave the State Court freedom to extend its protection over the specific fund?

There was no replication, nor evidence introduced at the hearing; the Appellee Crawford submitted the case on Bill and Answers. (Tr. pp. 49 and 50.) The necessary rule in such case is that "*the material allegations of the Answer are taken as true in all points, and the allegations of the bill which are not admitted are to be taken as untrue.*"

Bates Fed. Eq. Proc. S. 327.
Reynolds vs. Bank, 112 U. S., 409.
Banks vs. Manchester, 128 U. S., 244.

The State Court pleadings of these Appellants, appearing in the Transcript on pages 23 to 32 as exhibits, are adopted as part of their answer (Tr. p. 18), and are therefore cited as freely as the body of the answer itself.

BRIEF OF THE ARGUMENT

I.—No agent of the bankruptcy court, prior to the action of the State Court, had ever laid hold upon the McCrimmin crop or its proceeds of sale in such way as to forbid the State Court, in due regard for the obligations of comity, to lay hold upon the co-partnership funds including it, for the purpose of determining the questions of title thereto and rights therein.

II.—By ordering LeBlanc to bring in a definite sum of money and interest, irrespective of the source from which he obtained it, the Bankruptcy Court had left the McCrimmin *crop and the proceeds of its sale* subject to be controlled by any court of competent jurisdiction.

III.—It appearing that the State Court had, in the *proper* exercise of its jurisdiction over LeBlanc and over the funds of his co-partnership, extended the protection of its injunction to a specific fund—bank deposits of the partnership—no person or officer, taking those funds or part of them from LeBlanc with notice, could be lawfully shielded by the Bankruptcy Court from the process of the State Court. None but a court of revisory powers should have interferred with the State Court's control of the fund.

IV.—The determinatoin in an ex parte proceeding of the Bankruptcy Court, against the trustee as such, that property has come into his hands as trustee, did not conclude the right of the trustee's co-partners to try title thereto in the State Court, when in fact the property had at all times been in possession and control of a conventional trustee, holding same for the partnership.

V.—No circumstances existed in this case to authorize a summary dispossession of these appellants.

VI.—Equity forbade the granting of an injunction by the Bankruptcy Court under the circumstances.

VII.—The trustee in bankruptcy should, on his request, have been relieved of his position when conflict of claim arose as to the property between creditors claiming that it belonged to the bankrupt estate, and the trustee's firm of co-partners claiming it belonged to them; and since he was first subjected to an *ex parte* order requiring him to account to his successor for the *value* of the property as property of the estate, such order should have yielded readily to his showing that the only funds which he could resort to for obtaining the sum had been placed beyond his control, in a court of competent jurisdiction, where prompt plenary trial of right and title was offered as between his partners and his successor in trust.

VIII.—Since the jurisdiction given to the Bankruptcy Courts by the amendments of 1903, to try suits involving adverse claims of title to property, was made to depend upon the existence of fraud in the adverse claim, it follows that such power exists only in cases of fraud; and that the only proper court in which to try the questions of title and right here involved, (where the record shows that appellants acquired their claim in good faith, under a contract beneficial to the estate), was the State District Court.

IX.—This agreement for producing an unplanted rice crop for Broussard, as Trustee for Appellants' firm, in consideration of advances necessary to make the crop, and contemplating that the said firm should bear the expenses of rent of the land, water necessary for irrigating it, and all the other expenses of harvesting and saving it, is not within the prohibition of the bankruptcy law although part of the consideration was an antecedent debt, only partially secured, and the petition in bankruptcy of the insolvent debtor followed within four months after the written evidence of the agreement was executed.

X.—Since the unplanted crop was essentially and exclusively the product of a parol agreement of Moore with Broussard, as trustee for appellant's firm, made more than four months prior to bankruptcy, the fact that the written evidence of the agreement was not executed more than four months prior to bankruptcy is immaterial on principles of equity and under the Texas law.

ARGUMENT

I.

The Bankruptcy Court had never such control of the McCrimmin crop or the proceeds of its sale as to forbid its being taken, as part of the funds of appellants partnership, under the protection of the State Court.

The full statement as to the possession and control of that crop, herein designated as the "McCrimmin crop," is made in Section 3 of these defendants' answers (Tr. p. 15) as follows:

> "Defendants deny that the crop of rice on the Mc-"Crimmin farm ever came into the possession or con-"trol of said LeBlanc in any capacity, and aver that "same was at all times after the 15th day of June, "1906, in the possession of J. E. Broussard and under "his complete control and management, and that said "J. E. Broussard, as trustee of said crop and as Man-"ager of the Beaumont Rice Mills, caused the said "Moore and Bridgeman to harvest the said crop, and "haul same for him; that in doing so the said Moore "and Bridgeman used part of the teams and imple-"ments of the said bankruptcy estate, and in part used "the implements of the Beaumont Rice Mills, and the "said LeBlanc as trustee, was duly paid by the Beau-"mont Rice Mills the usual and customary rates for "said services, including the labor of Moore and "Bridgeman, and all other service employed therein, "in accordance with an agreement made with said "Moore by J. E. Broussard prior to performance of "the service, and greatly to the advantage of the bank-"rupt estate. That it is true the said LeBlanc took "possession of the rice grown on the *Stengle* farm and "sold same, and accounted for its proceeds, and took "possession of the mules, horses and implements; but "it is not true that E. J. LeBlanc ever sold the crop "on the McCrimmin farm or any part of it, but the "facts are, that Defendant J. E. Broussard received

"said crop, paid therefrom the water rates of two sacks per "acre, and placed the remainder, amounting to about "3583 sacks of the value of $11,651.25, in the ware- "houses of the Beaumont Rice Mills and that in all "respects the averments contained in Section 3 of said "original bill of complaint in this cause are false, ex- "cept to the extent they conform to the allegation in "this clause of defendant's answer."

As stated above, LeBlanc only occupied a clerical place in the affairs of his partnership, the management being given over to Broussard, Tr. p. 14.

The suit of these appellants against LeBlanc did not pertain to any property in the hands of LeBlanc as trustee. It sought to enjoin him personally from taking funds of the partnership. It was therefore unlike the cases of White vs. Schloerb, 178 U. S., 545, and Re Russell, 41 C. C. A., 325, in each of which a replevin suit was brought by adverse claimants to recover specific property in the hands of the trustee, and was held to be properly enjoined. In the Russell case the distinction was pointed out, the Court saying:

"We should entertain no doubt that the Machinists "Supply Company was entitled to bring an action of "trespass or trover for the recovery of the *value* of the "property against the trustee, in the State Court."

On the same principle there would be no conflict here, since the Bankruptcy Court's order directed LeBlanc to account for the definite sum ascertained to be the *value* and not for the crop itself.

As between Courts having concurrent jurisdiction for plenary trial the one whose jurisdiction for such trial has been first called into exercise should be left untrammeled in the exercise of its jurisdiction for adjudication of the ultimate rights, leaving the processes of execution to be looked after in the court having control of the property or fund in litigation.

Orton vs. Smith, 18 How., 263.
Yonley vs. Lavender, 21 Wall, 276.
Byers vs. McAuley, 149 U. S., 620.

It may be conceded that if the Bankruptcy Court had a general jurisdiction and proper machinery for trial of title to property and there had been begun in it, before the State Court suit was filed, proceedings for a *plenary trial, its*

jurisdiction would have been exclusive, *irrespective of whether it had custody of the fund in question or not.*

Rickey, etc., vs. Miller & Lux, 218 U. S., 259.

But there was here no conflict of the kind arising between Courts of concurrent jurisdiction; for whatever proceeding *existed* in reference to this crop in the Bankruptcy Court was of a wholly different kind from that in the State Court. It was a proceeding in *rem* where all persons who participated had common claim and whose interest, at least in the capacity in which they participated, was to have the estate include the property; while the proceeding in the State Court, was for determination of an adversary claim as between the estate and persons not participating in the proceedings in bankruptcy. Where there is such difference there is no conflict unless the first court to act has taken the property into its custody, and then only to the extent that the second Court attempts to interfere with possession.

Watson vs. Jones, 13 Wall, 679; 20 L. Ed., 671.
Re Russell, 41 C. C. A., 325.

Declarations apparently to the contrary occur only in those cases in which the one Court has attempted to interfere with the *custody* of the other.

Murphy vs. John Hofman Co., 211 U. S., 562.
Palmer vs. Texas, *infra.*

If it should, for argument's sake, be conceded that the Bankruptcy Court had custody of the property, yet the State Court, having jurisdiction of a wholly different kind from that in which LeBlanc and the fund were being *summarily* dealt with, could have proceeded to due and orderly adjudication, leaving the Court of administrative powers to respect its orders as its spirit of comity should prompt, as had been done in situations where the reverse conditions prevailed, i. e., where the State Court was the Court of administrative powers having the fund in custody, while the appropriate Court for adjudication had been the Federal Court.

Yonley vs. Lavender, 21 Wall, 272; 22 L. Ed., 536.
Byers vs. McAuley, 149 U. S., 620; 37 L. Ed., 873.

Notwithstanding declarations in the extreme cases involving conflict of *custody,* to the effect that "possession carries with it the *exclusive* jurisdiction to determine all judicial questions concerning the property," (208 U. S., 46; 211 U. S., 569), it is too plain for argument that the jurisdiction of

the Court having possession may be limited, or be devoid of the machinery necessary to afford a constitutional trial, and in such cases it is necessary to preserve the ordinary jurisdiction of the other courts over the property, exclusive for the purpose of determining title, and there is no principle which requires one court's temporary possession of property to exclude another's exercise of power to determine title to it, even where its jurisdiction is only concurrent.

Yonley vs. Lavender, Supra.
Orton vs. Smtih, 18 How., 263.
25 U. S. Stats., 433 S. 3.

But the above citations to the *record* under this heading show as matter of fact that *the Bankruptcy Court never had actual custody of the fund in question or any part of it*, and the Appellants, as adverse claimants, declined to go into the Bankruptcy Court to submit their claim. The principle of Constructive Custody is limited in operation to those who participate in the proceedings and their privies. Such a fiction could never operate so as to require the true owner of property, in peaceable possession and not a party to the litigation, to go into the court claiming constructive custody, as the court of exclusive jurisdiction over it.

In cases like this the jurisdiction of the Bankruptcy Court must depend wholly upon actual or constructive custody of the fund, (Murphy vs. John Hofman Co., 211 U. S., 569), or upon such voluntary subjection of the adverse claim to its jurisdiction as was done in Coder vs. Arts, 213 U. S., 233, or suggested in Bardes vs. Bank, 178 U. S., 524. Both elements were wanting here and for this reason jurisdiction in the Bankruptcy Court over the claim asserted by these appellants was wanting, or, to say the least, not in exercise, when the State Court extended its protection over the partnership funds.

II.

The Bankruptcy Court had not its hand upon any specific fund, but relied solely upon its power over the person of LeBlanc, at the time the State Court extended its protection to the fund in question.

In the Petition of the Appellants in the State Court, (Tr. p. 28), whose allegations were adopted in its answer herein, (Tr. p. 18), it was alleged of the injunction prayed for:

"That an injunction restraining such action *would "not in any way interfere with the process of the*

"United States District Court, since its orders do "not purport to reach the rice or its proceeds in the "hands of the Beaumont Rice Mills, but only charge "the said E. J. LeBlanc to account personally for the "value of the rice as found by said decree."

The order of the State Court, while recognizing its obligation to protect the partnership funds in a plain case, was carefully framed with a view to avoid conflict with the Bankruptcy Court. (Tr. pp. 29 and 30.)

The order in question of the Bankruptcy Court, (pp. 44 and 45 of the Transcript here), shows that LeBlanc was directed to bring into the Bankruptcy Court a certain sum of money, the ascertained value of the rice, and it was not inferable that he could have relieved himself by obtaining and surrendering the rice itself, or its proceeds of sale, or its actual value, if less than the sum named.

This Court has held that *the pendency of proceedings* in a Federal Court wherein it had previously had specific property in its grasp, did not prevent a State Court from taking the same property into its control after the Federal Court had released its grasp; and that a new order of the Federal Court then made, attempting to extend its grasp to the property, would be just as improper as if it had never had the property in custody.

Shields vs. Coleman, 157 U. S., 178.

Note also what was given as the unanimous opinion of this Court in Buck vs. Colbath, 3 Wall, 334; 18 L. Ed., 260, as follows:

"It is only while the property is in possession of "the Court, either actually or constructively, that "the Court is bound or professes to protect that pos- "session from the process of other Courts. When- "ever the * * * possession of the officer or Court "is discharged, other courts are at liberty to deal "with it according to the rights of the parties before "them, whether those rights require them to take pos- "session of the property or not."

Under sound principles of construction and interpretation that meaning should be given to the orders which is consistent with right action on the part of the State Court.

Sec. Trust Co. vs. Black R. N. Bank, 187 U. S., 227.

The subsequent acts of the Bankruptcy Court cannot be properly looked to in determining the proper construction to

be placed on its previous order for the purpose of imputing wrong. The character of the State Court's act must be determined in the light of the facts as they existed at the time of the act and not in the light of subsequent orders of the Bankruptcy Court; and the subsequent orders of the Bankruptcy Court must be construed in the light of what had been previously done by both Courts. It required the subsequent order of the Bankruptcy Court to produce any conflict at all and its last order produced a sharp and irreconcilable conflict, sanctioning a contempt of the State Court which it seemed almost to have forced upon its officer by its order of April 9, 1909. (Tr. p. 18.)

III.

The State Court having rightfully assumed control, none but a court of revisory powers should have caused, or sanctioned, interference with its control.

Whether the State Court is to be regarded as having taken the fund under its protection before the Federal Court ever laid hold upon it or after the Federal Court released its hold, the rule is the same. The Court, whose protection has been *rightfully* extended to property, must be deemed to have exclusive control.

Orton vs. Smith, 18 How., 263.
Farmers L. & T. Co. vs. Lake St. El. R. Co., 177 U. S., 62.
Palmer vs. Texas, 212 U. S., 125.

In the last named case the language of the Court in passing on a conflict of possession and deciding it is as follows:

> "If a Court of *competent* jurisdiction, State or Fed-
> "eral, has taken possession of property, *or by its pro-*
> *"cedure has obtained jurisdiction over same,* such
> "*property* is withdrawn from the jurisdiction of the
> "other authority as effectually as if the property had
> "been removed to the territory of another sovereignty.
> "Wabash R. R. vs. Adelbert College, 208 U. S., 38, and
> "previous cases of this Court cited therein at page
> "54."

If the jurisdiction of the State Court had *rightfully* extended over the partnership funds, it was a personal wrong of LeBlanc to take same in violation of its orders; it was equally a wrong on the part of any person taking them from him with notice. No doubt, when LeBlanc accepted the position of trustee in bankruptcy he subjected his person to the

Bankruptcy Court's control and it could deal with him in the most simple and direct manner and insist on his going to jail or else producing the sum in question, so long as he was not expressly directed to take it in violation of the State Court injunction; but when he produced the sum, manifestly taken in violation of the State Court order, it was the duty of each of the Federal Court officers, as such, to repudiate LeBlanc's act, and treat him as not having complied with the Bankruptcy Court's order. To receive the fund with full knowledge of LeBlanc's violation of the State Court's order was to make themselves parties to it. They could not be assumed to be agencies of the Bankruptcy Court in such action. *Rex non potest peccare.* Their wrong was personal. The right to control the fund remained unimpaired in the State Court, and it cannot be possible that it was necessary for it, or these invoking its power, to first sue for leave in the Bankruptcy Court before proceeding to follow up the fund in the hands to which it had wrongfully passed out of its own hands.

Peck vs. Jenness, 7 How., 625.
Dietzsch vs. Huidekoper, 103 U. S., 494.
Prout vs. Starr, 188 U. S., 544.

The error of the Bankruptcy Court has lain in a clear breach of comity—in its accepting from LeBlanc funds known to have been taken by him in violation of a State Court's order which was not in conflict with any previous order of the Bankruptcy Court. Its procedure, on learning that LeBlanc had only produced the sum by violating the order of the State Court, was clearly this, viz., to treat LeBlanc as not having complied with its order at all and to direct that LeBlanc's successor surrrender the fund on the undisputed evidence of the source from which it was obtained, or else to leave the whole question of *right* to the fund to be tried in the State Court, directing the Appellee to proceed with the defense therein.

Gumbel vs. Pitkin, 124 U. S., 131.
Peck vs. Jenness, *Supra.*

For the Bankruptcy Court, in view of the record as here made, to grant the injunction against following up the fund in the hands of Crawford, was the equivalent in principle of ordering LeBlanc in the first place to go into the partnership funds of these appellants in frank violation of the State Court's order. To urge that, in advance of such sanction, it was necessary to obtain consent of the Bankruptcy Court to

sue Crawford is on a parity with the exploded contention that one must have consent of a State to sue a State officer who under misconstruction of his authority violates a constitutional right in the commission of a trespass.

It could not be assumed in advance that the Bankruptcy Court would adopt the wrongful act of Crawford, and, therefore, it could not be supposed necessary to get its permission before making him a party to the proceedings of the State Court whose orders he had knowingly made himself a party to the violation of.

The supplemental petition which made Crawford a party should be read in connection with appellee's allegations relating to it, and it will be observed that it assumed that his acts were personal and would not be countenanced by the Bankruptcy Court, and that it did not contemplate the probability of the Bankruptcy Court making any orders sanctioning the clearly wrongful taking and retention by Crawford of possession of the fund. (Tr. pp. 31 and 32.)

Ordinarily non-interference is a mere matter of comity; but as between Courts of the United States and State Courts it is something more. "It is a principle of right and law and therefore of necessity."

Metcalf Bros. vs. Barker, 187 U. S., 175.
Exp. Royall, 117 U. S., 254.
S. 720 R. S. of U. S.

IV.

The ex-parte action against LeBlanc could not as against these Appellants even give character to the proceedings, contrary to the truth, so as by estoppel to determine the forum for subsequent proceedings.

As matter of fact, Appellants, through Broussard, had at all times control of the McCrimmin crop. (Tr. p. 21.) It would be absurd to hold that proceedings to which they were not parties could estop them to assert that truth.

Smith vs. Mason 14 Wall, 432-3.

The character of proceeding against LeBlanc, relating to the McCrimmin crop, was selected by creditors of the Bankruptcy, and insisted upon by them. If those proceedings were ill-chosen, very burdensome and wholly inconclusive, they have only themselves to hold responsible for it. For example, how reasonable it would have been to let LeBlanc retire from the position of trustee before forcing him through

the disagreeable but inconclusive proceedings adopted by the creditors to test the right to the McCrimmin crop, and allow a substitute trustee to proceed for it with proper parties. Certainly they were bound to know that the enforced participation by LeBlanc in the proceedings as trustee and the attendance of Appellant Broussard as a witness and the fact of his being a surety on the bond of LeBlanc would not make the proceedings conclusive of the claim of these appellants. The right spirit of regard for opposing parties or for the Court would have guided the creditors aright. But, on the contrary, the spirit in which they have conducted their fight has been that of disregard for all adverse claims, whether of substantive right or rights in respect of procedure. It needs no very extended examination of their part in the record to see that. They want an ex parte proceeding against LeBlanc to be held binding against his firm, on the theory that one of his partners was a witness, (Tr. pp. 7); they insisted on his remaining trustee until the court passed on the question, summarily in *ex parte* proceedings, of his firm's adverse claim to property (Tr. p. 48, S. 4); their very bill in this case expresses the nature of their regard for principles of justice in the passage on p. 7 of the Transcript where, they insist on this injunction against appellants, "whether their claim thereto was just or not;" and in the clause on p 8 where, indulging their humor on a question of tyrrany, they say of LeBlanc that it "was perhaps prudent to comply with the order of the Court directing him to make such payment."

There was a notion current in some quarters (but never sanctioned by this Court, Eyster vs. Goff, 91 U. S., 521), that Bankruptcy Courts are about free from the limitations imposed by the Due Process clause of the Constitution, and the attitude of the creditors seems to have been determined by that notion.

There is, on the contrary, no substantial difference in principle between a bankruptcy proceeding and the administration of a receivership or of a decedents estate; if conflict of claim arises as between the administrator or receiver and the estate, he is usually allowed to retire and contest the claim with his successor. If he has been ordered, in a *summary* way, to produce some fund or property in Court the order yields readily to a showing that the matter of right has become involved in some plenary judicial proceeding in which a court of competent jurisdiction has extended its control over the subject of controversy with a view to a con-

clusive and final determination of the questions of right which, in the proceedings *in rem* could only be passed upon as an administrative measure and inconclusively.

Re Chase, 59 C. C. A., 629.
Hurley vs. A. T. & S. F. R. Co., 213 U. S., 132.
Peck vs. Jenness, 7 How., 625.

V.

No Circumstances existed to Authorize Summary Action against the Appellants.

There are cases in which the right of the Bankruptcy Court to take summary action against persons holding adversely is recognized. (Re Baudoine, 41 C. C. A., 318; White vs. Schloerb, 178 U. S., 542.) That is only where the right of the estate to property is admitted or clear or the power of the Court is not questioned. There should be no circumstances under which a Bankruptcy Court can suspend the operation of the Constitution and deny to persons outside of the bankruptcy proceedings the protection afforded by a fair and orderly trial. (Eyster vs. Goff, 91 U. S., 521.) However that may be, there are no circumstances here warranting summary action against these appellants. There was an undisputed debt of $6177.03 due them from Moore in January, 1906, (Tr. p. 23), for security of which they held a lien on about $3000 worth of live stock and implements, (Tr. p. 27); in addition they agreed, through Broussard, to advance Moore $1000 and secure the rent charges of the land in consideration of Moore's farming and turning over to them the crop on the McCrimmin tract, (Tr. pp. 24 and 25); under the $1000 stipulation they actually advanced $1139.80 (Tr. p. 26); taking a written transfer to Broussard before the crop was planted, (Tr. p. 25); in June, the crop was taken over in satisfaction of all claims against Moore, (Tr. p. 26), thus releasing, to the advantage of general creditors, these appellants' lien on said live stock and implements. (Tr. p. 27.) Moore and Bridgeman, working on their own crop for the trustee, were employed by Broussard to harvest the neighboring McCrimmin crop, they using the teams and implements of the bankrupt with some of Broussard's, and the bankruptcy trustee being paid by Broussard for their services. (Tr. p. 27.) The total expenses of harvesting, threshing, sacking, hauling, freight, etc., of the McCrimmin crop, amounting to more than $4200, were paid by Broussard. (Tr. pp. 27 and 29.) Appellants' petition in the State Court declares that he took first the trust instrument from Moore,

transferring the crop, (Tr. p. 25), and next the absolute parol assignment of the crop, without thought of preference or of defrauding or injuring anyone. (Tr. p. 26.)

VI.

Equity forbade the granting of the injunction here complained of.

The defendants in the instant suit, including these appellants, when they were enjoined from prosecuting their suit in the State Court, were in this attitude, viz: They had caused their partnership funds to be taken under the protection of the State District Court and had tendered into that Court, to be subjected to its immediate order, (waiving the ordinary processes of execution), a part of said funds equal to the amount which LeBlanc was ordered to bring into the Bankruptcy Court, (Tr. p. 28 and certificate p. 46); appellants were, moreover, tendering a prompt trial, (Tr. p. 19), with the idea that a successor for LeBlanc would be appointed to defend it, (Tr. p. 30), and with the idea that their partner would be relieved by the Bankruptcy Court of the consequences of the mere summary order against him, on their showing in a plenary trial that the McCrimmin crop had been rightfully appropriated by their firm; it was claimed by LeBlanc that he had the right to take the partnership funds since his firm had appropriated the McCrimmin crop and since he had no other source, save their partnership funds, of obtaining the sum which he was ordered to bring into the Bankruptcy Court. (Tr. p. 18.) Since the creditors in the Bankruptcy Court, in inconclusive proceedings selected by them, had obtained a ruling from the Bankruptcy Court adverse to these appellants, it was natural that these appellants, disputing the correctness of the result, should select for plenary hearing a Court in which the judge of the Bankruptcy Court would not sit. (Compare S. 21, Act of 1911.) For the Bankruptcy Court to sanction the taking and retention of a second sum from the funds of the partnership, equal to that already tendered by the appellants into the State Court, was not in accord with fundamental maxims of the system of jurisprudence to which the remedy of injunction belongs. And this view is especially strengthened by the consideration that its order was made along in 1909, (Tr. p. 45), about three years after the bankruptcy had been opened, (Tr. p. 27), and that neither these appellants nor their firm had ever made any claim in bankruptcy for allowance for what in the absence of title to the crop would be about $3000 of live stock and implements of the bankrupts admittedly covered by first lien in their favor to secure over $6000 of indebtedness exist-

ing prior to the beginning of the crop of 1906, (Tr. p. 27 and p. 23), and for more than $5000 advanced by Broussard on behalf of the Beaumont Rice Mills, in making and saving the McCrimmin crop, (Tr. pp. 27 and 29).

VII.

Controlling force should be accorded to plenary judicial proceedings over mere summary orders in those that are ministerial.

In this case the trustee in bankruptcy rejected the demand of creditors that he inventory certain property as property of the estate, because he thought it belonged to his firm. (Tr. p. 27.) Recognizing the conflict of duty to his firm with his position as trustee, he at the same time tendered his resignation as trustee. (Tr. p. 28 and p. 48.) On exceptions urged to his inventory he was charged with the obligation to account for the *value* of the crop, as part of the estate. (Tr. pp. 44 and 45.) No one could suppose that in such a proceeding his firm's claims of title to the crop would be concluded any more than it would have been if, instead of being a trustee in bankruptcy, he had been an executor or administrator in the probate court. In such a court, however emphatically the administrator might be charged with the duty of taking possession of or accounting for the value of specific property, he could always discharge himself by showing that in a plenary hearing in a court of competent jurisdiction the claim of the estate had been fairly adjudged against, or he could excuse immediate production of the fund by showing that it had been taken into control by some court of competent jurisdiction for the purpose of a plenary trial of title; and the fact that he himself was a member of the association or firm asserting the adverse claim could not affect the matter further than to suggest that he be relieved of his position as trustee so as to give place to a new one in no way disqualified to represent the estate in the trial. The principle is thus stated by this court in Hurley vs. A. T. & S. F. R. Co., 213 U. S., 132:

> "It is settled that a trustee in bankruptcy has no "equities greater than those of the bankrupt, and that "he will be ordered to do full justice, even in some "cases where the circumstances would give rise to no "legal right, and, perhaps, not even to a right which "could be enforced in a court of equity as against an "ordinary litigant. Williams, Bankr. 7th Ed., 191. In- "deed, bankruptcy proceeds on equitable principles so "broad that it will order a repayment when such

"principles require it, notwithstanding the court or "the trustee may have received the fund without such "compulsion or protest as is ordinarily required for "recovery in the courts either of common law or "chancery."

VIII.

Amendments of 1903 were not intended to give the Courts of Bankruptcy jurisdiction for recovery of property in cases where the adverse claim is of the nature here manifested.

If the provision of the Bankruptcy act could be construed as extending the powers of administration of the court to everything owned by the bankrupt not transferred more than four months prior to bankruptcy, yet the quotation from the record above made in division I of the argument shows that *the Bankrupts really never owned the crop in controversy, but that it actually came into existence burdened with the equities asserted in favor of these appellants.*

The material portions of the amendment of 1903, with the other unchanged portions of Section 60b, read as follows:

> "If the bankrupt shall have given *a preference and* "*the person receiving it* * * * *have reasonable* "*cause to believe it was intended thereby to give a* "*preference,* it shall be voidable *by* the trustee, and he "may recover the property or its value from such per- "son. And for the purpose of such *recovery* any court "of bankruptcy * * * shall have * * * ju- "risdiction."

The general provision embraced in S. 23 is that:

> "Suits by the trustee shall only be brought * * * "in the courts where the bankrupt * * * might "have brought them."

In the case of Harris vs. Bank, 216 U. S., 382, this Court refused to extend the provisions of the amendments of 1903 to a suit for property held over under a contract of bailment, which the bankrupt had had with defendant.

In the case of Bush vs. Elliott, 202 U. S., 479 and 480, it is said by Justice Day, delivering the unanimous opinion:

> "The bankruptcy act of 1898, in respect to the mat- "ters now under consideration, was a radical de- "parture from the act of 1867 (14 Stat. at L. 517, "Chap. 176), in the evident purpose of Congress to

"limit the jurisdiction of the United States Courts "in respect to controversies which did not come "simply within the jurisdiction of the Federal Courts "as bankruptcy courts, and to preserve, to a greater "extent than the former act, the jurisdiction of the "State Courts over actions which were not distinctly "matters and proceedings in bankruptcy."

Quoting from Bardes vs. Bank, 178 U. S., 531, in the same case, he says in discussing S. 23:

"This clause, while relating to the Circuit Courts "only, and not to the District Courts of the United "States, indicates the intention of Congress that the "ascertainment, as between the trustee in bankruptcy "and a stranger to the bankruptcy proceedings, of the "question whether certain property claimed by the "trustee does or does not form part of the estate, to "be administered in bankruptcy, shall not be brought "wtihin the jurisdiction of the National Courts solely "because the rights of the bankrupt and of his credi- "tors have been transferred to the trustee in bank- "ruptcy."

It is suggested that the amendment of 1903 was not intended as a negation of what is above said, but merely to affirm the summary jurisdiction and power given to Bankruptcy Courts, by the act of 1898, upon which some doubt may have been cast by the opinion in that case; the pertinent part of the jurisdictional clause of the act of 1898 was as follows:

"* * * Courts of Bankruptcy, as hereinbefore "defined, viz., the District Courts of the United "States * * * are hereby invested * * * with "such jurisdiction at law or in equity as will enable "them to exercise original jurisdiction in bankruptcy "proceedings, in vacation in chambers and during "their respective terms * * * to * * * (7) "cause the estates of bankrupts to be collected *and de-* "*termine controversies in relation thereto* except as "herein otherwise provided; * * * (15) make "such orders, issue such process and enter such judg- "ments in addition to those specially provided for as "may be necessary for the enforcement of the pro- "visions of this act * * *"

The dictum in the Bardes case, conflicting with the above suggestion, was expressly declared an inadvertence in the case of Bryan vs. Bernheimer, 181 U. S., 197.

Since the *jurisdiction* of the Bankruptcy Court was, by the amendment of 1903, made to depend upon the question *whether or not a voidable preference was given,* and since the merits of the case would in effect have to be passed upon in determining the question of jurisdiction, it was manifestly intended that the Bankruptcy Court should not exercise the power of dispossession or "recovery" given it by the Amendment of 1903 except in clear cases and that in proper cases it should act summarily for the purpose of preservation and administration of the estate, (Babbett vs. Dutcher, 216 U. S., 102), and not for the purpose of cutting off the right of trial from strangers to the Bankruptcy Court who claim adversely thereto. See the principles expressed in Smith vs. Mason, 14 Wall, 419; L. T. Co. vs. Comingore, 184 U. S., 24.

In view of the well known rules of construction of statutes in relation to the powers of courts of limited jurisdiction, (Sutherland on Stat. Const. 1st Ed. S., 435), and the several meanings that are given to the word "recovery," it can hardly be doubted that the sense in which it was here used was the most limited, being such jurisdiction as a Justice of the Peace would exercise for distraint of property of value beyond the jurisdiction of his court. Stroud's Jud. Dict., citing Haines vs. Welch, L. R. 4, C. P. 91.

It necessarily results from the wording of that amendment that in the absence of consent or acquiescence of parties, every judgment rendered by the Bankruptcy Court involving *title* as between the bankrupt and adverse claimants would be, if wrong, beyond the powers intended to be vested in the Court of Bankruptcy.

Therefore, it was the ministerial power of determining whether the court should direct its officer to lay hold on certain property, that was given, and not the judicial power of determining title; and this view is in harmony with the character of the Bankruptcy Court as a tribunal for *administration* rather than for *judicial* work—a Court always in session for the determination summarily of the questions arising in the course of a vigorous administration including adjudication of all rights in the property that is admittedly a part of the *res,* and having no jury for plenary trial of adverse claims to the estate, nor other such machinery as, with due respect for the constitution, that its jurisdiction could be forced

upon strangers who hold some object or fund disputing that it is part of the *res*. Where it has undisputed power over the *res*, it is necessarily an exclusive power. As said by this Court in the case of U. S. Fid. Co. vs. Bray, decided at last term, L. C. P. Co. Adv. Sheets, p. 625, of October term, 1911:

> "A distinct purpose of the bankruptcy act is to sub-
> "ject the administration of the *estates of bankrupts* to
> "the control of tribunals clothed with authority and
> "charged with the duty of proceeding to final settle-
> "ment and distribution in a *summary way*, as are the
> "Courts of Bankruptcy. Creditors are entitled to have
> "this authority exercised and justly may complain,
> "when, as here, an important part of the administra-
> "tion is sought to be effected through the slower and
> "less appropriate processes of a plenary suit in
> "equity in another Court, involving collateral and ex-
> "traneous matters with which they have no concern,
> "such as the controversy between the complainant and
> "the indemnitor banks."

In the light of this clear declaration, applied to what was admittedly a part of the estate, the collateral principle can be seen that Bankruptcy Courts are not proper tribunals to try adverse claims of *right* to property which is not admitted to be part of the *res*.

Since the jurisdiction there exercised is distinctly *in rem* it would be a contradiction for an adverse claimant to go into the Bankruptcy Court to assert his claim. The amendments of 1903 do not, therefore, make provision for any such absurdity as for the adverse claimant, disputing the bankrupt's right to the property in question, to go into the Bankruptcy Court to assert his claim. Those amendments in terms only apply to suits brought *by* the trustee in bankruptcy.

By going into the Bankruptcy Court and thus admitting its power over the property, the adverse claimant would be conceding half his case and waiving constitutional protections. (Coder vs. Arts. 213 U. S., 235.) For there has never been any doubt but that an adverse claimant could estop himself by *consenting* to the Bankruptcy Court's exercise of jurisdiction.

Bardes vs. Blank, 178 U. S., 539.
Harris vs. Bank, 216 U. S., 384.
Bryan vs. Bernheimer, 181 U. S., 197.

It is not believed that S. 2 of Article 3 of the Constitution could be construed as authorizing the enactment of a law empowering a Bankruptcy Court as now constituted to wrest unto itself without consent of parties the exclusive office of settling finally a conflicting claim of *right* between itself or its agent, the trustee, and one claiming property adversely to the trustee; the principle that no one should be judge in his own cause being remotely involved. The *only* theory upon which such jurisdiction could be claimed is that the judicial power extends to "cases arising under the constitution and laws of the United States," and the laws, (passed in pursuance of the uniform bankruptcy clause), provide for adjudication in the District Court of questions of right arising in bankruptcy proceedings, and for the reduction into possession and the settlement and distribution of the estate. To extend the power beyond the bankruptcy proceedings, themselves, and to make it applicable to persons who are in no way connected with the bankruptcy proceedings, but have their claims wholly independent of the bankrupt, would be as rational as to extend it to any other claim asserted in good faith in distinct hostility to the bankruptcy estate. The power to regulate bankruptcy settlements was never intended to include the final and conclusive settlement of controversies between a bankruptcy estate and an adverse claimant. Such claims will usually depend, as here, upon the law of the State, Sexton vs. Kessler, *Supra;* Byers vs. McAuley, 149 U. S., 620; L. Ed. 811, and will require, like any other plenary litigation between adverse parties, the protection afforded by the 5th and 7th amendments, and such trials *being great primary objects of government,* cannot be regarded as mere incidents of "uniform laws on the subject of Bankruptcies."

Smith vs. Mason, 14 Wall, 433.

There could be no plausible pretense that the rights of these appellants had been tried in the Bankruptcy Court. The Circuit Court of Appeals in its opinion on the proceeding against LeBlanc declared:

> "There is nothing in the subject matter of dispute "and certainly nothing in the character of the pro- "ceedings that could be construed into a plenary suit "in equity."

The injunction here complained of must have been based upon the theory that the Bankruptcy Court was the only place for assertion of Appellants' claim. (Tr. p. 8.)

IX.

The Arrangment here involved is not a voidable preference.

The petition of these appellants in the State Court, (Tr. pp. 23 to 30), the allegations of which were adopted in their answer here, (Tr. p. 18), show that in January, 1906, the bankrupt, E. F. Moore, was indebted to Beaumont Rice Mills, (the firm of these appellants), in the sum of $6177.03, (Tr. p. 23), for security of which they had a lien on about $3000 worth of live stock, implements and tools of Moore or Moore and Bridgeman (Tr. p. 27). That Moore and Bridgeman had then undertaken to cultivate in rice about 1400 acres of the Stengle farm the advances therefor to the extent of $6000 to be furnished by Houston Rice Milling Company, with mortgage on all the crop to be grown thereon. That Moore and Bridgeman were then insolvent and it was contemplated that their crop on the Stengle farm would probably be consumed in paying their indebtedness to the Houston Rice Milling Company, and that all their teams and resources which they then had would be occupied in producing the crop on the Stengle land, (Tr. p. 24); that E. F. Moore proposed to Broussard to rent about 280 acres, the McCrimmin farm, and cultivate it in rice with a view to making its crop discharge his indebtedness to Beaumont Rice Mills, after first paying out of it the rent, water rates and other expenses payable at and after harvest, and an addi-toinal advancement for seed and supplies, to the amount of $1000 necessary to put the crop in; that Broussard, as manager for Beaumont Rice Mills agreed to this in January and assured the landlord of the payment of the rent and made advances to the amount of $1139.80 for the cultivation of the crop, but did not take written evidence of the contract until April 5th, 1906, which was about the time the first of said advancements were made; that on the last named date a written transfer of the crop was made to said Broussard by E. F. Moore, in order that he might hold same as trustee to secure the performance of the said agreement, that same was filed for registration June 8th, 1906, (Tr. pp. 24 and 25); that Broussard, at the time of the agreement took control of the crop, and long prior to the execution of said agreement, assumed the obligation to pay the rent for the year 1906, (Tr. p. 26); that about June 15, 1906, he agreed with Moore that he would take the crop as it then was in satisfaction of all the obligations of said E. F. Moore to Beaumont Rice Mills, (Tr. p. 26); that afterward on July 26th, 1906, said Moore and Bridgeman filed their voluntary peti-

tion in bankruptcy, but believing their claim satisfied by said McCrimmin crop the Beaumont Rice Mills permitted the time for filing claims against the bankrupts to elapse and had never filed any claim against them, (Tr. p. 27); that in addition to the above recited advancements, and surrender of lien on livestock appellants' firm had expended sums aggregating about $4160 in harvesting, threshing, sacking, hauling and storing the rice, (Tr. p. 27 and p. 29), some of it being actually paid to the trustee in bankruptcy as such for assistance from the employees and teams of the estate. In their answer herein these appellants allege they acquired their right to the crop without reasonable cause to believe it was intended to give them a preference, (Tr. p. 20); or that any person would suffer injury thereby, (Tr. p. 29).

The above is intended as a full statement of the pertinent parts of the pleadings relating to the nature of appellants' claim to the crop.

It shows that appellant's firm received the written evidence of the agreement within four months previous to the bankruptcy and that they then knew Moore to be insolvent, but it further shows there was no preference involved because the contract did not have to do with any existing asset, the transfer of which could prejudicially affect the interest of other creditors, but contemplated the production of a crop which could have had no existence but for the contract, which contract therefore actually benefitted general creditors by releasing lien-covered property to them and by reducing the indebtedness upon which dividends of the previously available assets would need to be figured.

It is unnecessary to again repeat here the arrangements, so favorable to the bankrupt's estate, under which the McCrimmin crop was made possible by the firm of these appellants, which create an unanswerable claim to the protection of equity.

Hurley vs. Atchison T. & S. F. R. Co., 213 U. S., 134.

X.

The arrangement was made by parol more than four months prior to bankruptcy and was of such character that it must be upheld in equity and under the Texas law.

It is shown that the agreement in question was really made by parol in January, 1906, more than six months prior to bankruptcy upon the equitable basis above recited; that before anything was done under it, beyond Broussard's as-

suring the landlord that his rent would be paid, and before the seed was planted, but a little less than four months before bankruptcy, Moore, on April 5th, 1906, executed the written transfer of the crop to Broussard.

Sexton vs. Kessler & Co., October term, 1911, p. 657 of L. C. P. Cos. Adv. Sheets.
Red River Bank vs. Higgins, 72 T. 56.
Ry. vs. Gentry, 69 T., 633.
Richardson vs. Washington, 88 T., 345.

This Court in Thompson vs. Fairbanks, 196 U. S., 524, quotes the following from 98 Fed., 974, with approval:

> "What was done was in pursuance of the pre-existing contract, to which no objection is made. Camp furnished the money out of which the property, which is the subject of the sale to him, was created. He had good right, in equity and in law, to make provisions for the security of the money so advanced, and the property purchased by his money is a legitimate security, and one frequently employed. There is always a strong equity in favor of a lien by one who advances money upon the property which is the product of the money so advanced. This was what the parties intended at the time, and to this, as already stated, there is, and can be, no objection in law or in morals. And so when, at a later date, but still prior to the filing of the petition in bankruptcy, Camp exercised his rights, under this valid and equitable arrangement, to possess himself of the property, and make sale of it in pursuance of his contract, he was not guilty of securing a preference under the bankruptcy law."

So in Hurley vs. Atchison T. & S. F. R. Co., 213 U. S., 314, this Court, speaking through Justice Brewer, says:

> "That the coal for which this money was advanced was not yet mined, but remained in the ground to be mined and delivered from day to day, as required, does not change the transaction into one of an ordinary independent loan on the credit of the coal company or upon express mortgage security. It implies a purpose that the coal, as mined, should be delivered, and is, from an equitable standpoint, to be considered as a pledge of the *unmined* coal to the extent of the advancement. The equitable rights of parties were not changed by the commencement of

"bankruptcy proceedings. All obligations of a legal "and equitable nature remained undisturbed thereby. "If there had been no bankruptcy proceedings, the coal "as mined was, according to the understanding of the "parties, to be delivered as already paid for by the ad- "vancement."

The principle involved in this division of our argument is this:

When one is in position to give or withhold the basis of a claim of right then the restrictions imposed by law, which ordinarily limit his dealings with the possessors of such basis, may be abolished as one of the conditions of his granting the basis of the claim of right.

In this instance the ordinary restriction is that no creditor can take advantage of a preference given him within four months before bankruptcy: but it is believed that such restriction would have no application to a subject whose existence essentially depended upon the contract out of which the preference arises.

The case of Moore Cortes Canal Co. vs. Gyles (Tex. Ct. of Civ. App.), 82 S. W. Rep., 350, involving a wholly different set of facts, yet perfectly illustrates the principle. For in that case a water company was, as a public service company, under the statutory restriction that it must not unreasonably burden those *landholders* who obtained service from it. But the restriction was held to have no application in favor of one who obtained his right to the *land* from the water company under the very conditions complained of as being unreasonable. By parity of reasoning it may be said that what alone could have brought the McCrimmin crop into existence was a contract one of whose terms was that the crop be appropriated to appellants.

SUMMARY.

These Appellants had a good and equitable right to the McCrimmin crop; to say the least, their claims are asserted under a contract such as the very restricted language of the Amendments of 1903 has no application to, and, therefore, their adverse claim is such as the Bankruptcy Court could not decide upon, and the State District Court should be left undisturbed, with assurance that the Bankruptcy Court will respect its decision; and if it should be determined to the contrary, i. e., if this Court should hold that the jurisdiction of the Bankruptcy Court over such claim is concurrent with

that of the State Court, yet it is manifest that in so far as these appellants' claim to the property or fund is involved there had never been or did not then exist, any proceeding of the Bankruptcy Court that was inconsistent or inharmonious with the State Court's exercise of jurisdiction over the fund which, subsequent to the beginning of its exercise of jurisdiction and control, was taken and appropriated by LeBlanc and his successor, Crawford, in violation of the State Court order.

Appellants, therefore, pray this Court to reverse the orders of the District Court of the United States and of the Circuit Court of Appeals and that such directions may be given as will obviate the possibility of further clash of process, and that full justice may be done.

Respectfully Submitted,

A. D. LIPSCOMB,
Counsel for Appellants.

FREDERICK S. TYLER,

Solicitors for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 83

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES AND J. E. BROUSSARD, APPELLANTS,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LEBLANC, APPELLEES

REPLY TO BRIEF OF W. J. CRAWFORD

The appellants object to the brief herein filed for W. J. Crawford for the following reasons to-wit:

The statements contained in said brief have no support in the record at all, in great part, and those which are at all based upon the record are based solely and only upon allegations contained in the bill for injunction filed by the said W. J. Crawford which were not supported by any evidence and which were not admitted but denied by these appellants, and therefore, under settled rules, must be regarded as untrue,

since appellee, as plaintiff, submitted the cause on bill and answer. (For authorities see p. 5 of Brief for Appellants). For example, in said brief of Crawford, on page one thereof, it is said:

> "That they (Moore & Bridgeman) were the owners of "crops of rice grown upon two farms known respective- "ly as the Stengle and McCrimmin farms."

While such an allegation was made in the said bill yet there was no evidence taken in support of same but the cause was submitted on bill and answer and said allegation was pointedly denied by the answer, in so far as it related to the McCrimmin crop, as shown on page 15 of the record.

Again on the same page of said brief of Crawford it is said: "The Beaumont Rice Mills, a co-partnership composed of appellants and LeBlanc, were scheduled as creditors and their claims stated at $9000."

The above is all the statement in reference thereto that is contained in said brief of Crawford, but the truth is stated in the answer of these appellants on page 14 of the trancsript and further in an exhibit made a part of said answer on page 26 of the transcript where it is shown that while such a purported claim was scheduled by the bankrupts, yet it was without the knowledge or consent of these appellants and that they never proved up nor asserted such a claim, and that they deemed all claims which they previously had against the bankrupts satisfied by the transfer to their manager, Broussard, of the McCrimmin crop.

Again on page 2 of the brief of Crawford it is stated that because of LeBlanc's failure to file an inventory creditors filed their petition to remove LeBlanc and that thereupon LeBlanc tendered his resignation. The true facts relating to this are stated in the answer, as follows:

> "Defendants aver that when said alleged creditors be- "gan to contend that the McCrimmin crop was a part of "the bankrupt estate, the said E. J. LeBlanc then real- "izing for the first time that he was being placed in an

"attitude of apparently representing two adverse claim-
"ants of the same property, tendered his resignation as
"trustee, but on the motion of said alleged creditors his
"tender was declined."

Again on page 2 of the said brief of Crawford it is said that the trustee LeBlanc, after qualifying as such, permitted the bankrupts to remain in possession of the property and that the crop of rice raised on the McCrimmin land was taken in charge by the trustee.

That again is one of the unproven allegations of the original bill of Crawford which was denied by the answer and therefore abandoned by submitting the cause on bill and answer. It was shown by the answer of these appellants that the crop never came into the possession of the trustee, LeBlanc, but that same was at all times under the complete control and management of, and in the possession of, J. E. Broussard, manager of the Beaumont Rice Mills; and on page 16 of the record it is shown in section 5 of the answer that while tools and implements of the bankrupt estate were used in harvesting same, yet it was under contract with the Beaumont Rice Mills to pay the customary price of the service; and on page 27, in an exhibit made a part of these appellants' said answer it is shown that the Beaumont Rice Mills actually paid to the estate all of the said charges therefor besides furnishing the sacks and paying for the threshing and hauling and all other things necessary for the harvesting and preservation of said rice, in the aggregate amount of $6337.79.

On page 3 of said brief of Crawford it is asserted that from all the evidence produced in the *ex parte* proceeding against LeBlanc as trustee the court held that the crop grown on the McCrimmin farm was the property of the bankrupts. The answer of these appellants on page 17 of the transcript shows:

"They have abundant evidence of disinterested par-
"ties not adduced on said hearing to show that long be-
"fore the McCrimmin land was rented by the bankrupts,
"or either of them, the crop upon it was destined for the
"Beaumont Rice Mills, the latter agreeing with the les-
"sor to pay the rent upon that consideration and the said

"crop being made possibly only by the advancements "made by the Beaumont Rice Mills under an agreement "that same should be applied in discharge of a debt ex- "isting in favor of the Beaumont Rice Mills, all ar- "ranged for long before the said crop had even a poten- "tial existence; besides evidence that Beaumont Rice "Mills surrendered liens upon other property of the "estate, greatly to the advantage of same, on obtaining "their right to the McCrimmin crop; and moreover on "many points conclusive of any claim by said estate, "these defendants will be able to educe additional evi- "dence in their own support on a plenary trial. These "defendants deny that they, through E. J. LeBlanc, sub- "mitted their rights to the determination of the referee "in said proceedings, and aver the fact to be that they "were not parties to said proceedings, and that their "firm was not, but that the proceeding consisted mere- "ly in a report by the said E. J. LeBlanc as trustee in "bankruptcy with exceptions urged thereto by creditors; "and they say they were never in any capacity parties, "nor was their firm ever a party to any of said bank- "ruptcy proceedings, and that neither of them ever filed "a claim against said bankrupts, but that they consid- "ered their claims had been extinguished by the trans- "fer to J. E. Broussard, in trust for them, of the said "McCrimmin crop, the written evidences of which had "been executed and filed for registration long before "bankruptcy was contemplated by any one connected "with the matter."

On page 3 of said brief of Crawford he says, "being a partner in the Beaumont Rice Mills, LeBlanc had notice that his firm was scheduled as a creditor to the amount of $9000.00." The answer to this is that neither of the appellants nor LeBlanc ever asserted or filed a claim against said bankrupts, as shown in their answer on page 17 of the transcript; and these appellants show in their answer on page 14 of this transcript that they had no knowledge why Moore & Bridgeman scheduled a $9000 claim in their favor and that it was without their knowledge and consent; and the same allegation was made in the petition of these appellants in the District Court as shown on page 26 of the transcript; and the fact that LeBlanc as trustee took no notice of that item in the schedule is readily explained by the allegation of said answer of these appellants on page 14 and again on page 23 of the transcript

where it is shown that while LeBlanc was legally a member of the partnership of these defendants, yet practically he was only acting as clean rice salesman on salary, the said Broussard being general manager; and that LeBlanc therefore was not charged with responsibility for or knowledge of the falsity in said schedule. LeBlanc was appointed trustee *at the instance of the creditors* and these appellants made no objection thereto because they had no doubt of their right to the McCrimmin crop, (Transcript, p. 27); and the creditors and this trustee, Crawford, have only asserted a claim to said crop on behalf of the estate after the chances of the season had matured it into a value beyond their expectation. (Tr. p. 20).

Again on page 4, probably as the result of clerical error, the said brief of Crawford states that "The record in that proceeding showed that the property was claimed by the trustee but delivered to the Beaumont Rice Mills." The answer of these appellants on page 20 of the transcript, which was admitted by force of the submission of the case on bill and answer by appellee, Crawford, is that the said E. J. LeBlanc never at any time claimed or actually had possession of said McCrimmin crop.

On page 4 of the said brief of Crawford, assertions of collusion and fraud are made against these appellants and LeBlanc which, it is needless to say, have no foundation in the record and cannot be reconciled with the answer, (Tr. pp. 16 and 17).

On page 6 of said brief of Crawford it is said that the supplemental petition filed in the State District Court was against appellee, Crawford, as trustee and that the prayer was for judgment against appellee, Crawford, as trustee. That allegation is not correct, as shown on pages 31 and 32 of the transcript, where the supplemental petition appears as an exhibit, and the obvious reason for not giving the prayer that form as against appellee, Crawford, was that it was presumed by these appellants that the United States District Court would never recognize as official and representative of it, his wrongful act of taking and retaining the funds with notice of their having been taken from the partnership assets

of these appellants in violation of the State Court injunction, but would treat his violation of the State Court order as his own private wrong.

The entire argument of appellee, Crawford, being based upon a purported state of facts wholly at variance with the record in this cause, we deem it unnecessary to make further reply to it or to review the authorities cited therein. To the appellees' suggestion that these appellants could, at slight inconvenience, have prevented LeBlanc from drawing their funds, in violation of the State Court injunction, we reply that it was the peaceful and equitable method pursued by them, of protesting against his taking it, and giving notice to his successor of the circumstances under which he obtained it. Appellants believe this court will approve that course as being preferable to the use of forcible methods against him, which, if successful, would have left him to be immediately committeed by the United States District Court for contempt, in accordance with the Judge's assertion that he would do so if the sum was not immediately brought into court by him. He had shown in his report to the court that he had no other means of obtaining the sum then by resort to the partnership assets, in violation of the State Court injunction, (Tr. p. 19). When the Federal District Court nevertheless ordered him to immediately bring in the sum, the only reasonable course open to these appellants was to protest against his taking the sum and to give timely notice to his successor, in full confidence that here at least the right of these appellants to an orderly trial of their claim of right to the property would be recognized, and that the principles of comity as well as the settled rule of law imposing on courts the *obligation* to observe those principles in relation to other courts of the same territorial jurisdiction, would receive such recognition here as to forbid sanction to a violation of the State Court's order.

Respectfully submitted.

FREDERICH S. TYLER,
A. D. LIPSCOMB,
Solicitors for Appellants.

Of Counsel for Appellants.

No. 83

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES AND J. E. BROUSSARD,
Appellants,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LEBLANC,
Appellees.

Appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR W. J. CRAWFORD, TRUSTEE, APPELLANT.

(22232)

STATEMENT.

On teh 16th day of July, 1906, Moore & Bridgeman, a firm composed of E. F. Moore and F. W. Bridgeman, filed their voluntary petition in bankruptcy in the court from which this cause was taken by appeal to the Circuit Court of Appeals. They were adjudged bankrupts on the 26th day of said month. They were the owners of crops of rice grown upon two farms known respectively as the Stengle and McCrimmin farms. The former consisted of about 1100 acres, and the latter of 280 acres, both of which were cultivated in rice. They were the owners also of a number of teams and a lot of agricultural implements and machinery. The crop grown on the Stengle farm and the teams, implements and machinery were scheduled as assets by the bankrupts. The crop of rice grown on the McCrimmin farm, out of which this controversy arose, was not scheduled. The Beaumont Rice Mills, a copartnership composed of J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, all of whom are appellants herein, and E. J. LeBlanc, appellee, were scheduled as creditors, and their claims stated at $9,000. The Parlin & Orendorff Company, Parlin & Orendorff Implement Company, Houston Rice Mills and L. W. Levy & Co. were scheduled as creditors, and each has proven its claim. E. J. LeBlanc was appointed trustee by the Referee and qualified as such by

giving his bond with J. E. Broussard and others as securities (Tr. pp. 2 and 15). He filed no inventory of the estate which came into his possession. For failing to do so the Parlin & Orendorff Implement Company and other creditors whose claims have been allowed filed their petition to remove him. Thereupon said trustee tendered his resignation, and filed with his petition resigning his trust what purported to be an account of his administration of the estate which came into his possession. The said trustee after qualifying as such permitted the bankrupts to remain in the possession thereof and to harvest the crops and manage and to control the property as they had done prior to filing their petition in bankruptcy (Tr. p. 3). The crop of rice raised on the McCrimmin farm was taken in charge by the trustee and harvested and threshed, and from this crop alone the trustee obtained 3583 sacks, of the value of $11,462.25 after paying two sacks per acre for water rent.

After this crop came into his possession he delivered it to the Beaumont Rice Mills, in which he was a partner, and made no account of it in the administration of the estate under his charge. Having failed to charge himself with the value of this rice and with the sum received for threshing other rice, the Parlin & Orendorff Company, the Parlin & Orendorff Implement Company, Houston Rice Mills and L. W. Levy & Co. filed exceptions to his account presented with his application to resign, and by such exceptions undertook to charge the trustee with the value of the McCrimmin rice and sums received from other parties for threshing, alleging in said exceptions that the crop of rice grown on the McCrimmin farm was the property of the bankrupts and that it consisted of 3583 sacks of the value of $11,642.25, and that it was taken in charge by the trustee as the property of said bankrupts and converted to his own use and to the use of the Beaumont Rice Mills, a co-partnership in which he was a partner (Tr. p. 3).

Upon the hearing of said exceptions the Referee refused to charge said trustee with the value of said McCrimmin rice, declaring that he had no jurisdiction to do so. Upon a petition for review the judgment of the Referee was overruled in the District Court, and the said trustee was charged with the value of said McCrimmin rice, amounting in value to $11,642.25, and with $345.20 for threshing for one Earl Keener, as claimed by said excepting creditors, and said trustee was

by the judgment of the District Court directed to pay said sums, amounting in the aggregate to $11,906.45, to the credit of the estate in his charge, and to include the same in the account of his administration, the court holding from all the evidence produced upon said trial that said crop grown on the McCrimmin farm was the property of the bankrupts, that it consisted of 3583 sacks, after paying the water rent, and was of the value of $11,642.25, and that it came into the possession of said trustee as the property of said bankrupts and was converted by him to his own use or to the use of his partnership (Tr. pp. 44-45).

The said E. J. LeBlanc, trustee, appealed from the decision of the District Court, and also filed his petition for a review of its judgment.

Upon the hearing of said cause upon appeal the same was dismissed, the petition for review was denied, and the judgment of the lower court in all things affirmed. The said causes upon appeal and petition for review were tried in the Honorable Circuit Court of Appeals for the Fifth Circuit on the 26th day of January, 1909, and are reported in Vol. 21, at page 651, American Bankruptcy Report.

The resignation of E. J. LeBlanc, trustee, and the accompanying account were filed in the month of December, 1906 (Tr. p. 3). It is charged in the bill and confessed in the answer that J. E. Broussard, the active manager of the Beaumont Rice Mills and surety on the bond of E. J. LeBlanc as trustee, was a witness and his testimony taken upon the hearing of all the exceptions filed by the creditors to the trustee's account (Tr. pp. 4 and 16). A copy of the schedules of the bankrupt is required by law to be furnished the trustee and presumed to have been complied with in this instance. Being a partner in the Beaumont Rice Mills, LeBlanc had notice that his firm was scheduled as a creditor to the amount of $9000. On the hearing of the exceptions to the trustee's report all the questions concerning the integrity of the transaction by which the Beaumont Rice Mills claimed to have had a lien on the McCrimmin rice, and afterwards to have become the owner of it by some character of purchase in satisfaction of its debt, were fully inquired into, its account with the bankrupts thoroughly examined, and all questions about whether they were scheduled as creditors fully presented. Broussard was examined and knew that the

Beaumont Rice Mills was scheduled as a creditor. The claim of his partnership to the McCrimmin rice was submitted to the bankrupt court upon all the evidence in the case, in the effort of the trustee to relieve himself from liability for its value. The of the trustee to relive himself from liability for its value. The record in that proceeding showed that the property was claimed by the trustee but delivered to the Beaumont Rice Mills and not to the estate of said bankrupts, and that he had turned it over to them for that reason, and said claim was discredited and denied, and said property held to be the property of the bankrupts and to have come into the possession of the trustee as such.

If appellants ever had any interest in or lien upon the McCrimmin rice they had not undertaken to establish it in the bankrupt court, which had jurisdiction of it. They have by collusion with the bankrupts and with the connivance of the trustee to take this property regardless of the position in which the trustee found it or of the opinion of any court as to the justness or validity of their claim. Finding, however, that the trustee has by his treachery and collusion with them to obtain this property rendered himself liable for its value, and being unwilling to submit any claim they had to it to the jurisdiction of the court whose authority they had treated with contempt, they filed their petition on the 12th day of March, 1909, in the District Court of Jefferson County, Sixtieth Judicial District of Texas, against their fellow conspirator and partner, E. J. LeBlanc, ostensibly for the purpose of preventing him from diverting the funds of the partnership to the payment of this judgment, but really for the purpose of undoing the judgment of the bankrupt court and of having it reviewed and if possible set aside by a judgment of the State court and of recovering the value of the property which had been held to be the property of the bankrupts upon a full hearing of all the testimony which appellants could produce upon that issue. Upon presenting the petition in said cause to the judge of said court, a preliminary injunction was directed to issue as prayed for upon the plaintiffs therein giving bond in the sum of $10,000, conditioned according to law, and upon the condition that the plaintiffs and their sureties pay over to the defendant therein, E. J. LeBlanc, or his successors in trust such sum as might be adjudged against them if any in said action, and upon

the further condition that plaintiffs would not prosecute said action until a successor of E. J. LeBlanc should have been appointed (Tr. pp. 29-30).

The mandate from the Circuit Court of Appeals in the cause appealed by E. J. LeBlanc was filed in the District Court, from which said appeal was taken, on the 3rd day of April, 1909. The defendant in said action never having paid or deposited the sum required of him by the judgment and decree of the District Court and of the Circuit Court of Appeals, the creditors of said bankrupts at whose instance exceptions had been taken to the report of said trustee on the 9th day of April, 1909, filed their application before the Honorable Judge of the District Court against the said E. J. LeBlanc, trustee, for an order to show cause why the sum of money required to be deposited by him was not paid in obedience to said order, and why he should not be punished for contempt of court in case he persisted in his refusal to pay (Tr. pp. 42-44).

Upon the hearing of said application the said E. J. LeBlanc, trustee, was directed to pay the same forthwith to H. H. Haley, Deputy Clerk of said Court (Tr. p. 45), and in obedience to said order the said E. J. LeBlanc, trustee, did pay the said sum, with interest amounting in all to $12,486, to the said H. H. Haley, Deputy Clerk. Appellee was thereupon appointed trustee of the estates of said Moore & Bridgeman, bankrupts, and the said sum deposited with the said H. H. Haley, Clerk, was paid over to him as trustee, and he has ever since had the same in his possession, as shown by the allegations of the bill (Tr. p. 6). After the payment of said sum to the said H. H. Haley, Deputy District Clerk, and after said sum was paid over to appellee by the said Haley, appellants on the 20th day of April, 1909, filed a supplemental petition in said District Court of Jefferson County, Sixtieth Judicial District of Texas, making appellee as trustee of the estates of Moore & Bridgeman, bankrupts, and the Gulf National Bank of Beaumont, in which appellee had deposited the funds received from the said E. J. LeBlanc in obedience to the order of the court, parties defendant in said action. It is alleged in said supplemental petition that appellee and the said Gulf National Bank received the said fund with interest; that the said E. J. LeBlanc, trustee, had withdrawn the same from the funds of the complainants in said action. They further state that they have deposited in

said District Court of Jefferson County, Texas, the sum of $11,561.25, with the interest thereon from the 17th day of December, 1907, at the rate of six per cent. per annum, but for what purpose does not appear. Judgment is prayed for against appellee as trustee, and against the Gulf National Bank for the sum deposited by E. J. LeBlanc, trustee, alleged to have been withdrawn from the complainants in said action and deposited with appellee and the said Gulf National Bank, and for any order that might be necessary to secure the observance of the writ of injunction which had been issued in said cause (Tr. p. 31). Appellee thereupon filed the bill from which this appeal was taken, praying for an injunction restraining the appellants from further proceeding in their action in the said court to enforce any lien which they claimed against the fund in the possession of the complainant in said bill and from attempting by such action to recover said fund. Upon motion of the complainant therein a temporary injunction was issued which was upon a hearing, after the coming in of the appellant's answer, made final, and the said appellants were perpetually enjoined and restrained from proceeding in the said court to recover said funds (Tr. p. 49). This judgment of the trial court was affirmed on appeal (Tr. p. 56).

Upon the resignation of E. J. LeBlanc it was the duty of the Referee to audit his account. The creditors who had proven their claim against the estate of the bankrupts had the right to file their exceptions and the Referee had the jurisdiction to determine all questions presented thereby. General Order No. 17 in Bankruptcy imposes this duty upon the trustee. When it was ascertained that the McCrimmin rice came to his possession and the value of it was fixed by the judgment of the District Court, from which the trustee appealed, upon the affirmance of that judgment in the Circuit Court of Appeals his liability was fixed irrevocably. That liability was established beyond all controversy. Subsequently, upon the payment of that sum to H. H. Haley, the Deputy Clerk, in obedience to the order of the trial court upon the return of the mandate, and when it was afterwards paid to appellee as trustee of Moore & Bridgeman, it then reached the actual possession of the trustee. All this is apparent from the bill and answer upon which the cause was tried in the lower court. Having reached the possession of the trustee, the sole question for consideration now is whether or

not the bankrupt court having the fund in charge had the right to protect the trustee by injunction against any action brought by the claimants thereto in the State courts.

ARGUMENT.

Appellee maintains the right of the bankrupt court to protect him by injunction against the action brought by appellants in the State District Court of the State of Texas to recover the funds in his hands or to interfere in any manner with his possession thereof, and in support of his contention submits the following authorities:

Revised Statutes U. S., Sec. 720;
Edward Murphy, Second Plaintiff in Error, vs. John Hoffman Co., 211 U. S., 562; 53 L. Ed., 327;
White vs. Schloerb, 178 U. S., 548; 44 L. Ed., 1183;
Whitney vs. Wenman, 198 U. S., 539; 49 L. Ed., 1157;
Muller vs. Nugent, 184 U. S., p. 1; 46 L. Ed., 405;
Gray vs. Larrimore, 188 U. S., 486; 47 L. Ed., 555;
Metcalf vs. Barker, 187 U. S., p. 175; 47 L. Ed., 122;
Clemenshaw vs. International Shirt and Collar Co. et al., 165 Fed., 797;
Bray vs. U. S. Fidelity and Guaranty Co., 170 Fed., p. 689;
In re. Mertens, 131 Fed., p. 507;
Loveland on Bankruptcy, 3rd Ed., p. 105; Sec. 22;
Watkin on Trustees in Bankruptcy, p. 70; Sec. 52.

In Metcalf vs. Barker, 187 U. S., at page 175, it is said: "It is well settled that where property is in the actual possession of the court this draws to it the right to decide upon conflicting claims to its ultimate possession and control."

It is shown by the bill and confessed in the answer that the fund in controversy was in the custody of the bankrupt court and in the possession of the appellee as trustee of Moore & Bridgeport, bankrupts, before the filing of the supplemental petition in the State court to enforce the lien or to recover said fund, and by which the appellee was made a party defendant.

In re. Mertens, the American Woolen Company sold to J. M. Mertens & Co. certain woolen goods in the business, and said goods were in the possession of the purchasers mingled with other goods at the time of the filing of the petition in bankruptcy and were taken in charge by the receiver appoint-

ed in that action, and afterwards by the trustee. The goods were sold by the trustee, and afterwards the American Woolen Company gave notice of the rescission of the contract under which said goods were sold, and brought an action in the State court against Albert K. Hisscock, as receiver, and afterwards trustee, to recover damages for the alleged conversion of said goods. The bankrupt court having the estate of the said bankrupt in charge, on application of the trustee, stayed the action in the State court. The Judge delivering the opinion in said case, on page 513, said:

"When property sold to the bankrupt prior to the proceedings in bankruptcy is found in his possession mingled with his stock in trade or other property it is pressumably his and when the bankruptcy court has taken possession of it and assumed control through its duly appointed receiver before a rescission of the sale, the vendor who assumed thereafter to rescind the sale on the ground of fraud practiced by the vendee (now the bankrupt) and who seeks to recover the property or its proceeds or damages from such officer of the court who has held and sold it pursuant to the order of the court, should be compelled to come into the court having the possession and control of the property and try the question of title thereof there, unless said court is without jurisdiction to try the question or the law of the United States has expressly placed concurrent jurisdiction elsewhere. If the court should find that the sale was procured by fraud then the rescission would be valid and the title would be in the vendor, and he would be entitled to the property, or its value, from the estate of the bankrupt, and this court would so award; but should the court find that such sale was not procured by fraud then the rescission would be of no avail and the title would be in the trustee in bankruptcy when appointed. Is not the bankruptcy court in possession of the property possessed of power and jurisdiction to try and determine this question? or must it await the trial and determination of a suit for conversion against its officer in the State court before proceeding to administer the trust and wind up the banruptcy proceedings? It is conceded that in such a case as this the bankruptcy court may enjoin an action in replevin in the State Court against the receiver or trustee to recover the property. Why may it not enjoin an action in trespass or for conversion brought against the receiver or trustee in bank-

ruptcy in the State court to recover the proceeds of a sale of the property or its value as damages for a conversion based on the claim that the title was in the vendor? Does the one action interfere with the property or proceedings in the court of bankruptcy any more or any less than the other? If so, wherein? Section 720 Revised Statutes United States, above quoted, recognizes the paramount authority of the bankruptcy laws in such case, and does not attempt to forbid the enjoining of suits in the State court by the Federal court as against a provision of the Federal laws permitting such action. This property in question here was included in the trust committed to the receiver and then to the trustee. It was a part of the trust estate. The American Woolen Company attempts to take it out of the trust and from the jurisdiction of the court in bankruptcy by rescinding the sale after such jurisdiction was obtained and asserted by this court. If the sale by the Woolen Company was procured by fraud, then this court should order the trustee to pay it to the value of the property; otherwise it should not. Must this receiver and trustee litigate this question of fraud in the State court and in another judicial district of the United States? Clearly, it seems to this Court the question may be fully determined by the bankruptcy court.

"Section 2 of Sub-Chapter 2 of the Bankruptcy Act (Act July 1, 1898, Chapter 541, 30 Stat. 545, U. S. Comp. St. 1901, p. 3420, as amended February 5, 1903, c. 487, Sec. 1, 32 Stat. 797, U. S. Comp. St. Supp. 1903, p. 409) defines the jurisdiction of courts of bankruptcy, viz.:

" 'That the courts of bankruptcy as heretofore defined * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms as they are now or may be hereafter held, to * * * (7) cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto, except as herein otherwise provided.' "

Here clearly is jurisdiction to try and determine the title to property found in the possession of the bankrupt purchased by and delivered to him, and which sale is sought to be rescinded

for fraud after the banruptcy proceedings have been instituted and after the bankruptcy court has taken possession of the property. Clearly, this is a controversy in relation to the estate of the bankrupt. In vain we search the act for a provision that deprives the bankruptcy court of power to determine such a controversy regarding the title to the property.

It would seem equally clear that the action of the American Woolen Company in rescinding the sale after the petition in bankruptcy was filed is an attempt to divest the title of the trustee in bankruptcy. Section 70 of the Bankruptcy Act, c. 541, 30 Stat. 565 (U. S. Comp. St. 1901, p. 3451), provides:

"The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, * * * to all * * * property which prior to the filing of the petition he (the bankrupt) could by any means have transferred or which might have been levied upon and sold under judicial process against him."

This property in question the bankrupt could have sold and transferred, giving good title, at any time before the petition was filed. It is, of course, true that if the property was obtained by fraud the Woolen Company had the right to rescind the sale and recover the property, or its proceeds, or damages for its conversion, if converted. In such case the title of the trustee would be subordinate to that of the Woolen Company. But the question of the right to the property, its possession and disposition, and also the disposition of its proceeds, depends on this question of fact, which the courts of the United States are as competent to try and determine as are those of the State; and having the custody of the property and its proceeds, and jurisdiction to determine the title thereto, this court will not permit the State court to intermeddle either with the property, its proceeds, or with the officer who has disposed of it by order of the Federal Court. Freeman vs. Howe, 24 How., 450, 16 L. Ed., 749. And this court has no hesitation in holding that in this case neither the receiver nor the trustee has been guilty of a conversion or wrongful disposition of the property in question. The conversion, if any, or wrongful disposition of the property, if any, has been committed by this court in bank-

ruptcy, for it has ordered and directed and approved these acts of its officers complained of, and alleged to constitute a conversion of the property, in proceedings duly had in this court, with the American Woolen Company present in court by counsel, and also by petition made by it, asking other disposition of the property than that made by the court. The defendants in the suit in the action in the State court sought to be restrained had done no act not directed by the court. If the authority and jurisdiction of this court in banruptcy is paramount and superior to that of the State court, and it has jurisdiction to determine conflicting claims to property forming a part of the estate of the bankrupt at the time the petition in bankruptcy is filed (and this property concededly was a part of the property of the bankrupt at that time, for the sale had not been rescinded), then this action in the State court should not be permitted to proceed further, for a judgment that either the receiver or trustee has converted this property would be an adjudication by the State court that this court in bankruptcy had no authority or jurisdiction to direct its officers to take possession of and sell the property. The sale to the bankrupt was not void; only voidable. 14 Am. & Eng. Enc. Law (2nd Ed.) 156; Foreman vs. Bigelow, 4 Cliff. 508 Fed. Cas. No. 4, 334; Cobb vs. Hatfield, 46 N. Y. 533; Gould vs. C. C. N. Bank, 86 N. Y., 75; Baird vs. New York, 96 N. Y. 567.

This court cannot assent to the doctrine that its trustee in bankruptcy is liable to an action in the State court as for trespass, trover or conversion, when he follows the order of the court in disposing of property in its possession. This is not a case where the receiver or trustee has taken and held and disposed of property which was outside of the possession and control and apparent ownership of the bankrupt at the time of the filing of the petition in bankruptcy, in which case this court should not and would not interfere. In such case the officer of this court would act on his own responsibility, and take his chances.

In re. Gutman & Wenk, 8 Am. Bankr. R. 255, 114 Fed. 1009, Adams, District Judge, said:

"Ordinarily where the receiver of the court has merely general directions to take into his possession the property of the bankrupt, and there is a claim that he has taken the property of a third person, the court, in conformity with general

principles, would leave him to answer in any proper forum for his individual acts (Buck vs. Colbath, 3 Wall. 344, 18 L. Ed. 257; Covell vs. Heyman, 111 U. S. 176, 4 Sup. Ct. 355, 28 L. Ed. 390; McNulta vs. Lochridge, 141 U. S. 327, 12 Sup. Ct. 11, 35 L. Ed. 796; Central Trust Co. vs. East Tenn. V. & G. Ry. Co., C. C. 59 Fed. 523; High Inj. Sec. 298; Hale vs. Bugg, C. C., 82 Fed. 33); but where it appears without dispute, as it does here, that the third party cannot possibly have any legal rights to be established by the litigation in the State court, and the result of permitting it to be continued would not only suffer an injustice to the receiver, but indirectly tend to embarrass this court in administering the estate, the equitable powers of the court should be exercised both for the prevention of the injustice and to protect the court's full jurisdiction. Dietzsch vs. Huidekoper, 103 U. S. 494 (26 L. Ed. 497); Chapman vs. Brewer, 114 U. S. 158 (5 Sup. Ct. 799, 29 L. Ed., 83); Garner vs. Second Nat. Bank of Providence, 67 Fed. 833 (16 C. C. A. 86); James vs. Central Trust Co., 98 Fed. 489 (39 C. C. A. 126); Mueller vs. Nugent (184 U. S. 1, 22 Sup. Ct. 269, 46 L. Ed. 405); 7 Am. Bankr. R. 224."

In Mueller vs. Nugent, 184 U. S. 1, 22 Sup. Ct. 269, 46 L. Ed., 405, 7 Am. Bankr. R. 234, it was decided:

"It is as true of the present law as it was of that of 1867 that the filing of the petition is a caveat to all the world, and, in effect, an attachment and injunction (Bank vs. Sherman, 101 U. S. 407, 25 L. Ed. 866); and on adjudication title to the bankrupt's property became vested in the trustee (sections 70, 21e), with actual or constructive possession, and placed in the custody of the bankruptcy court."

So here the filing of the petition in bankruptcy was notice to all the world of the pendency of the proceeding, and, in effect, an attachment of this property, and an injunction against all persons prohibiting them from intermeddling with it. This court took immediate custody of the property through its receiver.

In Mueller vs. Nugent, supra, the bankrupt had delivered, shortly before the petition was filed, property to a third person, who had no adverse claim to it; and he refused to deliver it to the trustee. In the summary application to compel this third person to deliver the property the Supreme Court said,

referring to teh necessity of a suit in the Circuit or State Court:

"If it be so, the grant of jurisdiction to cause the estates of bankrupts to be collected, and to determine controversies relating thereto, would be seriously impaired, and in many respects rendered practically inefficient. The bankruptcy court would be helpless, indeed, if the bare refusal to turn over could conclusively operate to drive the trustee to an action to recover as for an indebtedness, or a conversion, or to proceedings in chancery, at the risk of the accompaniments of delay, complication and expense, intended to be avoided by the simpler methods of the bankrupt law."

Here we find not only a direct affirmance of the power of the bankruptcy court to determine conflicting claims to property in the possession of the court, actually or constructively, but a condemnation of the theory that in case of dispute as to title the bankruptcy court should be subjected to the expense, delay, and embarrassment incident to the settlement of that question in some other tribunal—as the State court. It is well known that this action brought in the State court against the receiver and trustee cannot be reached for trial in New York county in less than two or three years, and to permit it to proceed would delay the settleemnt of this bankrupt estate for years. The whole question may be determined is this court, even allowing for an appeal to the Circuit Court of Appeals, in a few months.

In the case of White vs. Schloerb, 178 U. S., 542, the Justice delivering the opinion said: "In this case the statement certified by the Circuit Court of Appeals shows that after the adjudication of the bankrupt property in the possession of the bankruptcy court was prior to the qualification of the trustee taken by a Sheriff under a replevin writ which was issued from the State court. The bankrupts filed a petition in the U. S. District Court, wherein the court was requested to enjoin the holders of the property from disposing of the property and to compel them to re-deliver it to the District Court. Upon the filing of this petition the District Court issued its mandate to the holders of the property to show cause why the seizure under the writ of replevin should not be vacated and the property returned and why they should not be enjoined from further interference with the property. Pending the hearing on the

show cause order they were restrained from such interference. After the hearing the District Court restrained the holders from disposing of the property and ordered them to deliver it to the trustee, who presumably was appointed after the petition was filed and before the decision of the court. The Circuit Court of Appeals certified the following questions to the Supreme Court for its instruction:

"'1. Whether the District Court sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized:

"'2. Whether after adjudication in bankruptcy an action in a State court can be commenced and maintained against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of the adjudication.

"'3. Whether the property of a bankrupt upon his adjudication in bankruptcy is in custodia legis of the bankruptcy court and can be taken possession of under process of the State court.'

"In answer to the first question the Supreme Court said: 'Not going beyond what the decision of the case before us requires, we are of the opinion that the judge of the court of bankruptcy was authoried to compel persons who had forcibly and unlawfully seized and taken out of the judicial custody of that court property which had lawfully come into its possession as part of the bankrupt's property to restore that property to its custody, and therefore our answer to the first question would be, the District Court sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'

"In reference to the point covered by the second question the Supreme Court said: 'So far as regards this point the decision of this court in Freeman vs. Howe, 24 Howard 450, more than covers the case. It was there adjudged that property taken and held by a marshal on a writ of attachment from a court of the United States directing him to attach the property of one person could not be taken from his possession on a writ of replevin from the State court in behalf of another person who claimed the attached property as his own.'

"'The second question certified relates to this point, although it is not so clearly expressed as it might be and omits to mention in whose possession the property was when the writ of

replevin was sued out. To that question as explained and restricted by the facts set forth in the statement which accompanies it, our answer is, after an adjudication in bankruptcy an action in replevin in a State court cannot be commenced and maintained against a bankrupt to recover property in possession of and claimed by the bankrupt at the time of that adjudication, and in the possession of a Referee in Bankruptcy at the time when the action of replevin is begun.'

"The court held that the answers to the first and second questions rendered any further answer to the third question unnecessary."

In re. Russell & Birkett, 101 Fed. 248, the court says: "The prohibition of Section 720 of the Revised Statutes against enjoining the proceedings of a State court does not apply when any law relating to bankruptcy authorizes an injunction, nor does it where the proceedings sought to be enjoined have been commenced after the jurisdiction of the Federal court has attached. Fish vs. Union Pacific R. R., 10 Blatchford 518; French vs. Hay, 22 Wallace 250; Dietsch vs. Huidekoper, 103 U. S. 494."

In the case of Clemenshaw vs. International Shirt and Collar Co., 165 F. 797, a bill was filed in the bankruptcy court to establish a lien against the property in the custody of that court. The judge in delivering the opinion said: "The title to the property sought to be charged with the lien of a mortgage is vested in a trustee, an officer of this court, and was at the time of the commencement of the action. This court has the charge and custody of the property, and common sense seems to indicate that if any court is to charge it with a lien or permit it to be charged with a lien this is the one. If the transaction in and by which the lien was cancelled is fraudulent and voidable, may not this court at the suit of a party in interest so say? By section 2 of the bankruptcy act, an act to establish a uniform system of bankruptcy throughout the United States, * * * the District Courts are made courts in bankruptcy and vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings and to cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto. I am very sure that this

confers ample an plenary jurisdiction on this court to determine the question involved here.

"Whitney vs. Wenman, 198 U. S. 539, 49 L. Ed. 1157, ex parte, the City Bank of New Orleans in matter of William Christy, assignee, 3 Howard 292, 312-313, 11 L. Ed., 603. This is a plenary action in equity to determine whether or not plaintiff has a lien on the property and the extent of it. As stated, the property is now in the possession of this court and is to be reduced to money and distributed by it. In Whitney vs. Wenman, 198 U. S., at page 552, the court held: 'We think the result of these cases is in view of the broad powers conferred in Section 2 of the bankrupt act authorizing the bankruptcy court to cause the estate of the bankrupt to be collected, reduced to money and distributed and to determine controversies in relation thereto and bring in and substitute additional parties when necessary for the complete determination of the matter in controversy. That when the property has become subject to the jurisdiction of the bankruptcy court as that of the bankrupt whether held by him or for him, jurisdiction exists to determine controversies in relation to the disposition of the same and the extent and character of liens thereon or rights therein. This conclusion accords with a number of well considered cases in the Federal courts. In re. Whitener, 105 Fed. 180; in re. Antiago Screen Door Co., 123 Fed. 249; in re. Kellogg, 121 Fed. 333.'

"In the case of Murphy vs. John Hoffman Co., 211 U. S. 564-5, suit was brought by the appellee in the State court against the appellant, who was the trustee in bankruptcy in charge of the subject of litigation. The trustee applied to the bankrupt court, of which he was an officer, to stay the pending action against him in the State court. Justice Moody, delivering the opinion of the court, recites that portion of the facts of the case upon which the opinion is based as follows: 'On the 9th of October, 1903, the judge of the bankruptcy court, on the petition of the receiver, enjoined all further proceedings in the action of replevin until the further order of the court; enjoined the Sheriff from executing any requisition in replevin of the property in the possession of the receiver and enjoined the Sheriff and all other persons from interfering in any manner with the property then in the possession of the receiver. In delivering the opinion he proceeds as follows: 'Before going

further it is well to ascertain the principles of law which are applicable to the situation. The bankruptcy act of 1898, 30 Statute at Large, 544, Chapter 541, U. S. Comp. Stat., 1901, page 3418, as originally enacted did not confer jurisdiction on the district courts of the United States over suits brought by trustees in bankruptcy to assert title to property as assets of the bankrupt or to set aside transfers made by the bankrupt in fraud of the creditors or by way of preference, unless by consent of the defendant. Bardes vs. First National Bank, 178 U. S. 524, 44 L. Ed. 1175; Frank Vollkommer, 205 U. S. 521 51 L. Ed. 911. The act, however, preserves the jurisdiction otherwise existing by statute of the courts of the United States, though it is limited to courts where the bankrupt himself could have prosecuted the action. Bush vs. Elliott, 202 U. S. 477; 50 L. Ed. 1114.

"But where the property in dispute is in the actual possession of the court of bankruptcy there comes into play another principle not peculiar to courts of bankruptcy but applicable to all courts, Federal or State. Where a court of competent jurisdiction has taken property into its possession through its officers the property is thereby withdrawn from the jurisdiction of all other courts. The court having possession of the property has an ancillary jurisdiction to hear and determine all questions respecting the title, possession or control of the property. In the courts of the United States this ancillary jurisdiction may be exercised though it is not authoried by any statute. The jurisdiction in such cases arises out of the possession of the property and is exclusive of the jurisdiction of all other courts, although otherwise the controversy would be cognizable in them. Wabash R. Co. vs. Adelnert College, 208 U. S. 38 to 54; 52 L. Ed., 379, 386.

"Accordingly, where property was in the possession of the bankrupt at the time of the appointment of a receiver it was held that the bankruptcy court had jurisdiction to determine the title to it as against an adverse claimant, and that the receiver had no right to deliver it to him without the order of the court. Whitney vs. Wenman, 198 U. S. 539; 49 L. Ed. 1157, 25 Sup. Ct. Rep. 778. On the day the Bardes case was announced the same Justice delivered the opinion of the court in White vs. Schloerb, 178 U. S. 542, 41 L. Ed. 1183; 20 Sup. Ct. Rep. 1007, a case in which the facts were essentially those of

the case at bar. Certain persons, co-partners in trade, were adjudicated bankrupts and the case was sent to a referee in bankruptcy. They had a stock of goods in a store, the entrance to which was locked by the referee. Certain other persons claimed title to part of the stock of goods as obtained from them by fraudulent purchase which had been rescinded. After the adjudication these persons brought an action of replevin of the goods against the bankrupt in a State court, which was executed. It was held that replevin would not lie in the State court, and that the District Court had jurisdiction by summary proceedings to compel the return of the property seized. The court said: 'The goods were then in the lawful possession of and custody of the referee in bankruptcy, and of the bankruptcy court, whose representative and substitute he was. Being thus in the custody of a court of the United States, they could not be taken out of that custody upon any process from a State court.' The last two cases cited proceed upon and establish the principle that when the court of bankruptcy, through the act of its officers, such as referees, receivers or trustees, has taken possession of a res, as the property of a bankrupt, it has ancillary jurisdiction to hear and determine the adverse claims of strangers to it, and that its possession cannot be disturbed by the process of another court. And see Skilton vs. Codington, 185 N. Y. 80, 85, 86; 113 Am. St. Rep. 885; 77 N. E. 790, and Frank vs. Vollkommer, which, by implication, approve the same principle."

In Bray et al. vs. U. S. Fidelity and Guaranty Co. et al., 170 Fed., p. 697, Circuit Court of Appeals, Fourth Circuit, an attempt was made to establish a lien in the U. S. Circuit Court against property in the custody of a trustee in bankruptcy. The Judge, after a lengthy statement of the facts, in delivering the opinion of the court, says: "The facts of this case are given at length and in detail to the end that the entire controversy between the parties may be clearly presented and thus enable us to more readily determine such question of law as may be necessary to dispose of the appeal. * * * We think the only question to be decided in order to dispose of the case here is that of jurisdiction, and it is our opinion that the Circuit Court did not have jurisdiction to entertain complainant's bill.

"If otherwise, complainant had the right to assert a lien upon the property of the bankrupt Contract Company, such

right could not be availed of by a suit in the Circuit Court the object of which was to reach and determine priorities in the disposition of assets in the custody of the bankrupt court. Practically the effect of complainant's suit in the Circuit Court is to stay proceedings, in the matter of Evansville Contract Company, bankrupt, in the District Court, and to undertake to determine priorities or preferences in an estate in the custody and control of the latter court. This the Circuit Court is not empowered to do, for the jurisdiction of the District Court in bankruptcy in this respect is original and exclusive."

After qualifying as trustee LeBlanc took charge of the property of the bankrupts. He was a partner in the Beaumont Rice Mills, a firm composed of himself and all the appellants. Acting in collusion with them and with the bankrupts, he delivered the McCrimmin rice to his co-partners and thereby converted it to the use of his partnership. Charged by the creditors with its value in their exceptions to his report as trustee, he undertook with the assistance of the appellants to escape liability by showing it became their property by a contract claimed to have been made between Broussard, the largest contributor to the capital stock of the Beaumont Rice Mills, and the bankrupts. Failing in this, and being held responsible for the value of the rice which he had delivered voluntarily, he has paid the sum required of him by the court, and thereby settled his account and relieved himself from its judgment. Appellants say he has taken the fund for this purpose from his partnership. He has taken only the value of the property which he delivered to it in violation of his duty as trustee, and without an order of the court. The partnership has not suffered, because they have only returned the value of the property which they wrongfully accepted from their co-partnership in the first instance.

LeBlanc, according to the allegations of the answer and of the petition filed by appellants in the District Court of Jefferson County, has no authority over the funds of his partnership. He has only a 2-75ths interest in its capital stock. J. E. Broussard is the principal stockholder, and has absolute control over all the business and property of said partnership. Neither the answer filed in this cause nor the petition in the State court shows how it was possible for LeBlanc to obtain from his co-partnership funds with which to satisfy the decree of the United

States District Court by paying the sum of money named in it and neither shows how he did obtain it. He was powerless without the assistance of his bondsman, J. E. Broussard, the principal owner of the Beaumont Rice Mills, who is clothed, according to the allegations of the answer and petition in the State court, with absolute authority over all of its property. But Broussard as surety of LeBlanc was responsible for the debt named in the order of the court, and doubtless consented to the advancement to his co-partner. A frown from him would have protected the assets of his co-partnership as effectually as the injunction of the State court. He seems to have a distaste of the Federal tribunal, and desires the judgments and decrees of that court to be revised and corrected by a jury in the State court. When the property of Moore & Bridgeman passed into the possession of LeBlanc, trustee in bankruptcy, and when after its conversion by said trustee and his co-partnership its value was paid to the appellant as trustee it was in the custody of the bankrupt court and no other had jurisdiction over it. Reluctant as appellants may feel to coming into that jurisdiction, no other court had the right to hear and determine any question concerning the ownership of the fund in the registry of that court or in the possession of appellee, and the bankrupt court had the right to restrain appellants by injunction from undertaking to proceed in the State court to recover the funds in the possession of appellee.

It is respectfully submitted that the injunction was properly granted and made final, and that the judgment of the Circuit Court of Appeals in affirming said action ought here to be affirmed.

HORACE CHILTON,

U. F. SHORT,

Counsel for Appellee.